

UNITED STATES OF AMERICA,) Case No. 23-00164-01-CR-W-DGK
) Citation No. 9731780
 Plaintiff,) Kansas City, Missouri
) July 18, 2023
 v.)
)
 JERRY H. STAMPS,)
)
 Defendant.)
)

APPEARANCES:

For the Plaintiff:

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1 (Court in Session at 11:04 a.m.)

2 THE COURT: All right. Good morning. Oh, be seated.
3 All right. I've had a few technical glitches this morning so
4 we're a few minutes late getting started, but hopefully that will
5 not be a problem. So, we are -- all right. We are back on the
6 record in the case of *United States vs. Jerry Stamps*. And it's
7 Citation No. 9731780. If counsel would state their appearance
8 for the record.

9 MR. HEBERLE: Good morning, Your Honor. Nick Heberle
10 for the United States.

11 MR. MOORE: Good morning. Mark Moore for Defendant who
12 appears in person.

13 THE COURT: All right. So, we were here on June 2nd and
14 the -- on the petty offense docket, and there was a trial, but
15 the only evidence offered was the video, the YouTube video, which
16 I've looked at numerous times. And no other evidence was
17 offered. We had argument and then we had supplemental briefing.
18 So, I think I understand the position of the parties. And I
19 don't really feel like anything further is necessary this
20 morning, but certainly I just wanted to make sure that no one had
21 anything else they wanted to add on the record.

22 MR. HEBERLE: Nothing further for the United States.

23 MR. MOORE: Nothing further for the defense.

24 THE COURT: All right. So, rather than issuing a
25 written decision, it seemed like it would be easiest today to

1 come back to court and just to let the Court kind of on the
2 record indicate what my views are based on the briefings of the
3 parties. And just so we're clear, the ticket in question was for
4 taking photos through videotaping in violation of CFR 102-74.420.
5 And as I've mentioned, the only evidence offered was the video
6 taken by Mr. Stamps that he then posted on YouTube. No witnesses
7 were offered. No factual stipulations were offered. And there
8 were trial briefs ahead of time, but because, at the conclusion
9 of offering that evidence, Mr. Stamps raised First Amendment
10 constitutional issues, the Court wanted to take the matter under
11 advisement, and the parties have now filed supplemental briefing
12 on Mr. Stamps' claim of a First Amendment right to a video at the
13 Social Security Administration Office.

14 The Court views that it first needs to address the issue
15 of whether Mr. Stamps violated the regulation in question,
16 because if there's no violation, then we don't really get to the
17 First Amendment issue in the Court's view. And then if the Court
18 finds a violation, we'll talk about the First Amendment issue. I
19 know the parties have copies of the regulation at issue, but just
20 for the record, the regulation at issue says, "Except where
21 security regulations, rules, orders, or directives apply or a
22 federal court order or rule prohibits it, persons entering in or
23 on Federal property may take photographs of (a) Space occupied by
24 a tenant agency for non-commercial purposes only with the
25 permission of the occupying agency concerned; (b) Space occupied

1 by a tenant agency for commercial purposes only with written
2 permission of an authorized official of the occupying agency
3 concerned; and, (c) Building entrances, lobbies, foyers,
4 corridors, or auditoriums for news purposes."

5 Now, I should note that references made elsewhere, I
6 believe in that Operations Readiness order that was submitted by
7 Mr. Stamps' counsel to the fact that the Social Security
8 Administration has its own rules on photography, but no one
9 offered those rules. And so, if there are any, they're not
10 before the Court and really not at issue in this matter since the
11 Defendant wasn't charged with violating those rules, only the CFR
12 at issue. The parties do disagree on what section of this
13 regulation is at issue. And so I want to address that briefly.
14 The regulations refer to photography in (a) and (b) for non-
15 commercial and commercial purposes and allow photography in those
16 situations only with either the oral or written permission
17 depending on whether you're under (a) or (b). Defendant claims
18 that he falls under category (c). Although no evidence was
19 offered, it seemed to be clear based on what the Defendant said
20 on the videotaping that he did not have oral or written
21 permission to film inside the SSA. The parties really didn't
22 address in detail what the meaning of commercial and non-
23 commercial purposes were under (a) and (b). And while it's not
24 dispositive, I think that if you look at the Operation Readiness
25 order that was submitted by Mr. Stamps, it gives examples of what

1 the GSA and the regulators intended when they put this regulation
2 together. And under (a), they talk about examples of non-
3 commercial photography for which verbal permission would be
4 sufficient would be examples of one of the agencies as having a
5 promotional ceremony and someone wants to take pictures of the
6 promotional ceremony, or students coming in wanting to take some
7 kind of photographs for a school project. Clearly, I don't think
8 that Mr. Stamps falls under that kind of definition in terms of
9 non-commercial purpose. (b) talks about commercial purposes and
10 they would give examples of a professional photographer or
11 someone who wants to come in and take architectural detail
12 photos, actual movie studios that would want to film and would
13 need written permission. And again, it doesn't seem that Mr.
14 Stamps really falls under that category either.

15 With respect to (c) in which Defendant argues that he
16 falls under, neither of the parties have really addressed the
17 issue of whether a person can just announce I'm coming in to take
18 photos for news purposes and come under section (c). However, I
19 think for purposes of the ruling today, the Court can just assume
20 that for purposes of our situation that he falls somehow under
21 subsection (c). So, the issue then becomes whether the Defendant
22 violated the regulation that he could come in and photograph the
23 entrance, lobby, foyers, corridors, or auditoriums for news
24 purposes. And the Court has reviewed the videotape, as I've
25 mentioned several, several times. And it's clear that the

1 Defendant was allowed and was able to film the entrance, the
2 foyer, and lobby areas where people were sitting. But in
3 addition, the Court [sic] filmed private individuals coming and
4 going from the building. Defendant filmed the security guard
5 that worked behind his desk. And that included filming material
6 the guard pulled out of his desk to work on or review. And in
7 addition, the Defendant is repeatedly -- you can repeatedly see
8 him filming individuals seeking services at Office Number 1 which
9 was directly inside the door of the foyer area. I would also
10 note that when the Defendant explained the reasons that he was
11 coming in to film at the SSA, he stated -- this is kind of a
12 paraphrase and not an exact quote -- but he stated that he had
13 heard over the summer through other videos how horrible employees
14 at the SSA were acting in various offices and he was here to take
15 a look. It's clear he was not there to film the entrance, the
16 lobbies or the foyer, which he was allowed to do. But he was
17 there to film employees of the Social Security Administration in
18 their interactions with individuals who were seeking services of
19 the Social Security Administration. This is not permitted under
20 the rules and the Court finds the Defendant did film areas of the
21 Social Security Offices beyond what is permitted by the
22 regulation at issue even if he were to qualify a someone who was
23 filming for news purposes. It's clear that he didn't have
24 permission. So, certainly. he cannot attempt to justify his
25 filming under subparts (a) or (b).

1 Thus, I do conclude that the Defendant violated the
2 regulation at issue. And because the Defendant has raised
3 constitutional issues, I will try to briefly address those.

4 Defendant, in his briefing, correctly identified that
5 when you are making a First Amendment claim, you look at the type
6 of the forum involved. And Defendant sets out those forums being
7 public, designated public and non-public forums. However, the
8 Defendant incorrectly claims that the SSA is a designated public
9 forum. And just briefly, a public forum is one that's generally
10 available to the public for public expression, parks, streets,
11 roadways, public thoroughfares. A designated public forum is one
12 in which the government opens a traditional non-public forum to
13 public discourse, say, a concert hall for concerts, speakers,
14 that type of thing. And a non-public forum is a government
15 property not classified as a traditional public forum or
16 designated public forum. And in a non-public forum, primarily a
17 work office, the government may restrict speech and expressive
18 activity as long as the restrictions are reasonable and not an
19 effort to suppress expression merely because the public official
20 opposes the speaker's point of view. In a non-public forum, the
21 government has significant latitude to regulate expressive
22 activity. The restriction only has to be reasonable. And in
23 determining reasonableness, the Court looks, in part, at the
24 traditional use of the property. Here, we're talking about
25 property that's an office to be used for those applying for or

1 needing assistance with one of several Social Security programs.
2 There is no evidence, contrary to Defendant's assertion, that the
3 office has ever been opened up for public expression or
4 discourse. And in his video, Defendant offers the opinion that
5 any government office is a public area to which any member of the
6 public may enter at will to photograph. This is just an
7 incorrect statement of the law.

8 Finding that the Social Security Office was a non-public
9 forum, the Court next considers whether the regulation Defendant
10 is accused of violation was reasonable. In determining
11 reasonableness, the Court may rely on evidence or commonsense
12 inferences. No evidence was offered on the issue of
13 reasonableness, so the Court will rely on just commonsense
14 inferences based on the evidence before it. This is a busy
15 office, as seen on Defendant's own videotape with numerous people
16 coming and going whose entry and exit was blocked at times by the
17 Defendant's filming. Given the volume of traffic, a security
18 guard was stationed near the door to offer assistance and to make
19 sure no one entering had weapons. That large numbers of people
20 were coming and going is also reflected on the sign Defendant
21 videoed indicating that on that day the wait time for people
22 entering the building was going to be two hours. Thus, a
23 regulation limiting those -- the purposes for which those not
24 seeking services may enter and photograph I think is reasonable
25 to control this type of busy work environment.

1 So, for all of those reasons, the Court does find that
2 the Defendant violated the regulation and that his First
3 Amendment claims are not valid in this case. There was no
4 violation of the First Amendment in telling him he couldn't come
5 in to film the interactions between those seeking services and
6 the employees of Social Security.

7 At this time then, in a petty offense case, we move on
8 to sentencing. And Defendant certainly has the opportunity, as
9 well as his lawyer, to have a right to be heard, to present
10 evidence, or to make any other comments they want prior to
11 sentencing. So, on behalf of the Defendant, anything you or the
12 Defendant want to say for the record?

13 MR. MOORE: No, Your Honor.

14 THE COURT: All right. Anything the Defendant wants to
15 say?

16 MR. STAMPS: No, Your Honor.

17 THE COURT: All right. On behalf of the Government?

18 MR. HEBERLE: Nothing further, Your Honor.

19 THE COURT: All right. Well, just let me ask you this.
20 At one time the Government had made a recommendation, I believe,
21 on sentencing issues.

22 MR. HEBERLE: Yes.

23 THE COURT: And is that still your recommendation?

24 MR. HEBERLE: It is, Your Honor. And that
25 recommendation was a \$120 fine to include an \$85 -- excuse me.

1 \$120 total including an \$85 fine, \$30 process fee, and a \$5
2 special assessment.

3 THE COURT: And what is the range of punishment for this
4 particular offense?

5 MR. HEBERLE: Your Honor, I believe we went over that
6 prior to the trial. Unfortunately, I don't have that in front of
7 me right now. I believe this is a Class B misdemeanor, which
8 would include a range of punishment of up to six months
9 imprisonment and I believe up to a \$5,000 fine.

10 THE COURT: Yeah. That was my understanding of the
11 range of penalty. On behalf of Mr. Stamps, anything you want to
12 say about this penalty range?

13 MR. STAMPS: No, Your Honor.

14 THE COURT: All right. And really I was asking your
15 attorney.

16 MR. STAMPS: Oh, I apologize.

17 THE COURT: Anything you want to argue about the
18 appropriate penalty? Government is arguing \$120. I just have to
19 say, you know, from the Court's standpoint, I think I can look at
20 a number of factors. And, you know, he disrupted activity that
21 day. Police were called. We had at least, you know, four
22 officers out there. And so, the \$120 seems pretty minimal to the
23 Court in light of the incidents in question.

24 MR. MOORE: I agree, Your Honor. However, we plan on
25 taking this to appeal.

1 THE COURT: You do?

2 MR. MOORE: Yes.

3 THE COURT: All right. Well, in that case, although the
4 Government has recommended the \$120 fine, I think that that's way
5 too low given everything that was involved in this case on the
6 day of the incident in question. And so I'm opposing -- imposing
7 a \$500 fine on the Defendant. That will include the \$30
8 processing fee and the \$5 special assessment, and then the
9 remainder to be the fine. Anything else that the Court needs to
10 address?

11 MR. HEBERLE: Not on behalf of the Government, Your
12 Honor.

13 MR. MOORE: Not on behalf of Defendant, Your Honor.

14 THE COURT: All right. We'll be in recess.

15 (Court in Recess from 11:20 a.m. until 11:21 a.m.)

16 THE COURT: And obviously, since you're represented by
17 counsel, Mr. Stamps, you're well aware of this. But I did want
18 to just remind you, you do have the right to appeal, but you
19 would need to do that within 14 days. All right. With that
20 additional reminder on the record, we will be in recess.

21 (Court Adjourned at 11:21 a.m.)
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5 I certify that the foregoing is a correct transcript
6 from the electronic sound recording of the proceeding in the
7 above-entitled matter.

8
9 /s/ Lissa C. Whittaker
Signature of transcriber

July 25, 2023
Date